IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.451 OF 2004

...

Vimal G. Jain ...Petitioner

v/s.

Vertex Financial Services P.Ltd....Respondents

...

Mr. Yatin Shah for the Petitioner.

Mr.P.K.Samdhani i/b Purohit & co. for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 10TH JANUARY,2005

P.C.:

1. The award impugned is the award made by the Arbitrator Committee of the Stock Exchange.

2. Two challenges were argued before me. The first challenge was that the claim which has been awarded by the Arbitrator was that the claim which has been awarded by the Arbitrator was barred by the law of limitation. However, this contention was admittedly not raised before the Arbitrator. The learned Counsel appearing for the Petitioner also conceded that the question whether the claim is barred by the law of limitation would not be a pure question of law and would be the mixed question of law and fact. The Court hearing the petition under Section 34 of the Arbitration Act is not the court of fact, therefore, obviously the mixed question of law and fact cannot be raised for the first time in a petition filed under Section 34 of the Arbitration Act.

3. The second challenge to the award was that the amount of Rs.5 lakh was paid before incorporation of the Respondent/company to its two Directors, and therefore the Petitioner was entitled to be given credit for that amount.

4. The contention obviously is without substance, because even admitting that the amount was given to

the only two Directors of the Company, the Company exists independently of the Directors and therefore unless the Company takes over the liability for payment of loan which was given to its two Directors the Company cannot be held liable.

5. Thus, both challenges raised to the award has no substance. Petition is, therefore, disposed of.

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